(3)

No. 88-604

Supreme Court, U.S.
FILED
NOV 10 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1988

VICKI FROST,

Petitioner,

v.

HAWKINS COUNTY BOARD OF EDUCATION, JEAN PRICE, JOE ASHBROOK, BILL B. SNODGRASS, CITY OF CHURCH HILL, TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE RESPONDENT, JOE ASHBROOK, IN OPPOSITION

JAMES H. EPPS, III*
115 East Unaka Avenue
Post Office Drawer 2288
Johnson City, Tennessee 37605
(615) 928-7256

**Counsel of Record*

KENT HERRIN
HERRIN & HERRIN, Attorneys
515 East Unaka Avenue
Johnson City, Tennessee 37601
(615) 929-7113

10 November 1988

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

9 pp

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Statement of the Case 2

Argument 3

THE WRIT OF CERTIORARI SHOULD BE DENIED FOR THE FOLLOWING REASONS:

I. The Respondent, Joe Ashbrook, was exonerated in a jury verdict after all theories of liability had been presented. A new trial was denied and the District Court was affirmed on appeal 3

II. The decisions pertaining to the Respondent, Joe Ashbrook, were in accord with established precedence and in harmony with the decisions of this Court 4

III. Issues 1, 3 and 4 presented in the Petition for a Writ of Certiorari are not applicable to this Respondent 5

Conclusion 6

TABLE OF AUTHORITIES

Page

CASES

City of Los Angeles v. Heller, 475 U.S. 796, 106 S.Ct. 1571 4

Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982) 5

Mozert v. Hawkins County School District, 647 F. Supp. 1194, (E.D.Tenn. 1986) rev'd 827 F.2d 1058 (6th Cir. 1987) cert. denied. 108 S. Ct. 1029 (1988) 5

STATUTES

Tennessee Code Annotated Section 49-6-2008 3

No. 88-604

In The

Supreme Court of the United States

October Term, 1988

VICKI FROST,

Petitioner,

v.

HAWKINS COUNTY BOARD OF EDUCATION, JEAN PRICE, JOE ASHBROOK, BILL B. SNODGRASS, CITY OF CHURCH HILL, TENNESSEE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE RESPONDENT, JOE ASHBROOK, IN OPPOSITION

Respondent Joe Ashbrook presents this brief in support of his request that this Court deny the Petition for Writ of Certiorari, seeking review of the opinion of the United States Court of Appeals for the Sixth Circuit, as reported in 851 F.2d 822.

STATEMENT OF THE CASE

The issues presented for consideration by this Court are not applicable to this repondent, Joe Ashbrook, with the possible exception of issue number 2 set out below. Issues 1, 3 and 4 were not in the case.

> "2. May a public school have a nondisruptive mother arrested on school property and jailed for peacefully stating to school officials her sincere religious objection to certain required books in a reading class and for petitioning for exemption of her daughter from these books?"

Without belaboring the question of "nondisruptive mother" or the details of the circumstances which brought about the arrest of Vicki Frost, we would submit the following facts to supplement those in the Petition.

Joe Ashbrook, as the Chief of Police of Church Hill, Tennessee, carried the same duties as the other three officers on the force as to times on patrol during the twenty-four hour day. He was the duty officer in a cruiser on both the 22nd and 23rd of November, 1983, when he first was called to the school by the principal but on the morning of the 23rd was dispatched to the school as a result of a call by Vicki Frost herself.

The "confrontation" on that November morning led to Mrs. Frost's arrest for what Joe Ashbrook, in carrying out his duty as he saw it, felt was a violation of law in his presence. This incident was, of course, the centerpiece about which this case swirled.

ARGUMENT

Joe Ashbrook, the Chief of Police for the City of Church Hill, was sued in his official capacity and individually as he was the arresting officer in this incident. After an extensive trial he was exonerated by a jury verdict with all theories of liability having been charged in the instructions of the Court.

Vicki Frost had alleged, and sought to prove, that there was no probable cause for her arrest in the school principal's office on the morning of 23 November 1983. Joe Ashbrook testified that he felt he was faced with a breach of the peace (TR Vol. VII, p. 109, l. 4) and read to her Tennessee Code Annotated 49-6-2008 (18a[1]). The question of whether or not there was probable cause on the part of Joe Ashbrook to arrest Mrs. Frost was a jury question, and that was the way it was presented by the trial judge.

> " . . . whether or not there's probable cause on the part of Mr. Ashbrook, we'll leave to the jury."
>
> (Judge Thomas Hull, Conference with Attorneys, Vol. VIII, p. 29, l. 14)

The jury responded by its verdict exonerating Joe Ashbrook of any liability to Mrs. Frost.

The Court of Appeals, after review of the record, affirmed the jury's verdict in favor of this Defendant. The Court of Appeals for the Sixth Circuit said this with respect to Ashbrook:

> " . . . The basis of Frost's claims against the City is that Ashbrook arrested Frost without probable cause.

---

[1] Reference(s) to a number followed by the letter "a" is to the Appendix to the Petition for Certiorari.

> The jury decided that Ashbrook, by arresting Frost, did not violate Frost's constitutional rights, thereby implicitly suggesting that Ashbrook had probable cause to arrest Frost. Since a jury's findings that a police officer inflicted no constitutional injury on a plaintiff is conclusive not only as to the officer's liability, but also as to the liability of the city and its police commission. . . ." *City of Los Angeles v. Heller,* 475 U.S. 796, 106 S.Ct. 1571, 1573 (1986), we affirm the district court's directed verdict in favor of the City of Church Hill. While Frost may have a state claim against Ashbrook based on her arrest, this is a question of state law and we express no opinion as to its validity." 10a

The second question concerning Joe Ashbrook was that of his qualified immunity.

Chief Ashbrook sought the best advice he could get under the circumstances and it was the General Sessions Judge of Hawkins County himself who personally wrote the Affidavit of Complaint which Joe Ashbrook signed. (Petition p. 6, para. 2, l. 6). The same judge after a "full evidentiary hearing" in which the district attorney was the prosecutor in the matter dismissed the charges against Vicki Frost. (Petition p. 7, paras. 2 and 3). We would suggest at this point that the judicial process in the State of Tennessee is not to be faulted in its evident attempts to protect any citizen in the free exercise of his or her rights of free expression.

Regardless of any implications to the contrary in the Petition that Joe Ashbrook should have acted differently or that he should have been knowledgeable of constitutional law (Petition, p. 6, para. 2, l. 8) the issue was squarely presented in the Trial Court with an exoneration of Joe Ashbrook by the jury verdict.

The Court of Appeals surveyed this question of qualified immunity and held as follows:

> "As for Frost's personal capacity suits against Ashbrook, Price and Snodgrass, we believe that even if a federal right had been violated, defendants would have had available to them the defense of qualified immunity. In *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), the Court held that, in general, executive officials are entitled to qualified or good-faith immunity so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known. *Id.* at 815-19. Neither Snodgrass nor Price, by enforcing Board policy, nor Ashbrook by arresting Frost, violated any clearly established statutory or constitutional right of which a reasonable person should have known. *See Harlow*, 457 U.S. at 815." 13a

In the Petition, there is cited the case of *Mozert v. Hawkins County School District*, 647 F.Supp. 1194, (E.D.Tenn. 1986) rev'd 827 F.2d 1058 (6th Cir. 1987) cert. denied 108 S.Ct. 1029 (1988), and it is twice denominated as a "related" case by the Petitioner. (Petition p. 9, note 2 and p. 11, l. 4).

The instant cause is not "related" to the *Mozert* case insofar as this Respondent is concerned. Joe Ashbrook was not a party and was in no way involved with the *Mozert* case. The questions raised and determined in that "textbook" controversy are res judicata and the re-introduction of those issues in this Petition for Certirorari is completely inappropriate.

With the foregoing argument, the Respondent, Joe Ashbrook, would submit that his day(s) in Court have

been met and that he should not be required to answer further the issues in the Petition for Certiorari.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JAMES H. EPPS, III
Counsel of Record
KENT HERRIN
Attorneys for the Respondent,
Joe Ashbrook